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DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

POSITION STATEMENT

MB 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions

Section 1.	Scope and Purpose
Section 2.	Applicability
Section 3.	Position Statement
Section 4.	Issuance Date

Section 1. Scope and Purpose

Over the past six (6) years, from 2005-2011, the Colorado General Assembly passed nine (9) bills concerning the regulation of mortgage loan originators. The compilation of these bills comprises Colorado's existing law, entitled the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (the "Act").

The expediency of the legislation in the mortgage loan originator arena has led to some statutory ambiguities, however, as bills were quickly passed to address ongoing problems in the industry. One such ambiguity exists in the exemption portion of the Act, section 12-61-904, C.R.S. The exemption section defines all individuals and entities that are exempt or otherwise excused from complying with the licensure and registration standards outlined by the Act. The ambiguity is apparent in sections 12-61-904 and 12-61-911, C.R.S. The first sentence, or header, of section 12-61-904(1), C.R.S., states:

Except as otherwise provided in section 12-61-911, this part 9 does not apply to the following,
unless otherwise determined by the federal bureau of consumer financial protection or the United
States department of housing and urban development:

Certain individuals and entities are subsequently identified under the exemption section. Based on the header, these individuals and entities are considered exempt from the Act but must still comply with section 12-61-911, C.R.S.

Section 12-61-911, C.R.S., prohibits specific conduct by mortgage loan originators. Subsections (a) through (l) of section 12-61-911(1), C.R.S., describe prohibited conduct, which includes employing schemes to defraud any person, engaging in unfair or deceptive practices, obtaining property by fraud, utilizing deceptive or misleading advertisements, failing to comply with a variety of federal laws, failing to make disclosures defined in section 12-61-914, C.R.S., and failing to pay third-party service providers. However, subsection (m) of 12-61-911(1), may cause some confusion and ambiguity regarding the incorporation of this final prohibition in relation to the exemptions. Subsection (m) is essentially a "catch all" provision and incorporates failing to comply with any requirement of Part 9 as a prohibited action. Consequently, this subsection may be interpreted to mean that all individuals and entities otherwise exempted under section 12-61-904, C.R.S., must now comply with all provisions

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of the Act. Accordingly, the Board of Mortgage Loan Originators has issued this position statement to provide clarity to all individuals and entities identified under the exemption portion of the Act, section 12-61-904, C.R.S.

Section 2. Applicability

This position statement concerns all individuals or entities defined in the exemption section, section 12-61-904, C.R.S., of the Act.

Section 3. MB 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions

Individuals and entities listed in sections 12-61-904(1)(c) through (k), C.R.S., are exempt from all sections, provisions, and requirements of the Act. However, individuals identified in section 12-61-904(1)(b) of the Act are not exempt from the Act and must comply with sections 12-61-911(1)(a) through (l), C.R.S. of the Act. Section 12-61-904(1)(b), C.R.S., reads as follows:

With respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan.

Section 4. Issuance Date

The Board of Mortgage Loan Originators issues this position statement on May 16, 2012.